



# NEWS

Judicial Council of California  
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(415) 865-7740

Lynn Holton, Public Information Officer

Release Date: September 16, 2002

Release Number: S.C. 38/02

## **SUMMARY OF CASES ACCEPTED DURING THE WEEK OF SEPTEMBER 9, 2002**

[This news release is issued to inform the public and the press of cases that the Supreme Court has accepted and of their general subject matter. The description or descriptions set out below do not necessarily reflect the view of the court, or define the specific issues that will be addressed by the court.]

#02-151 People v. Howard, S108353. (F036961; 99 Cal.App.4th 43.) Petition for review after the Court of Appeal affirmed a judgment of conviction of criminal offenses. The court limited review to the following issues: (1) Is the offense of driving in willful or wanton disregard for the safety of persons or property while fleeing from a pursuing police officer (Veh. Code, § 2800.2) a felony inherently dangerous to human life for purposes of the second degree felony-murder rule? (2) Is the offense of proximately causing death or serious bodily injury by willful flight from a pursuing police officer (Veh. Code, § 2800.3) a more specific offense precluding application of the second degree felony-murder rule where death occurs during the offense of driving in willful or wanton disregard for the safety of persons or property while fleeing from a pursuing police officer (Veh. Code, § 2800.2)?

#02-152 People v. Smith, S108309. (B142943; 99 Cal.App.4th 138.) Petition for review after the Court of Appeal modified and affirmed judgments of conviction of criminal offenses. This case includes the following issues: (1) Is the doctrine of “sentencing entrapment” recognized in some federal cases (see, e.g., United States v.

(over)

Stauffer (9th Cir. 1994) 38 F.3d 1103) applicable under California law? (2) Is the defense of “outrageous governmental conduct” recognized in some federal cases (see, e.g., United States v. Bogart (9th Cir. 1986) 783 F.2d 1428) applicable under California law, in addition to the version of the entrapment defense embodied in California law?

#02-153 Winter v. DC Comics, S108751. (B121021; 99 Cal.App.4th 458.)  
Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. This case presents the following issues: (1) Did defendants’ comic book series, which included the characters “Edgar and Johnny Autumn,” meet the transformative test set forth in Comedy III Productions, Inc. v. Saderup (2001) 25 Cal.4th 387, precluding plaintiffs Edgar and Johnny Winter from pursuing their action for misappropriation of likeness? (2) Does Comedy III Productions, Inc. require defendants to establish that their depiction of plaintiffs was a parody before the transformative test can be applied?

#02-154 Jackson Plaza Homeowners Assn. v. W. Wong Construction, S107821. (A091787, A092000, A092062, A092084, A092537, A092730; 98 Cal.App.4th 1088.)  
Petition for review after the Court of Appeal affirmed in part and reversed in part the judgment in a civil action. The court ordered briefing deferred pending decision in Lantzy v. Centex Homes, S098660 (#01-104), which presents the following issue: Is the statute of limitations for an action to recover damages for latent construction defects (Code Civ. Proc. § 337.15) subject to equitable tolling during periods of repair, or, alternatively, does the principle of equitable estoppel bar application of the limitations period?

#02-155 In re Danny S., S108670. (F037969; unpublished opinion.) Petition for review after the Court of Appeal remanded in part and otherwise affirmed orders in a wardship proceeding. The court ordered briefing deferred pending decision in Robert L. v. Superior Court, S100359 (#01-144), which presents the following issue: Does Penal Code section 186.22, subdivision (d), as amended by the Gang Violence and Juvenile

Crime Prevention Initiative (Prop. 21, Primary Elec. (Mar. 7, 2000)), apply to any misdemeanor and any felony committed for the benefit of a criminal street gang, or only to those crimes expressly punishable either as a felony or as a misdemeanor?

## **DISPOSITIONS**

#01-53 People v. Briscoe, S096191, was transferred to the Court of Appeal for reconsideration in light of People v. Mower (2002) 28 Cal.4th 457.

The following cases were transferred to the Court of Appeal for reconsideration in light of People v. Willis (2002) 28 Cal.4th 22:

#02-10 People v. Ferguson, S102150.

#00-86 People v. Spence, S087865.

The following cases were dismissed and remanded to the Court of Appeal:

#01-93 Clayton-Brame v. Los Angeles County Dept. of Health Services, S098379.

#01-137 People v. Ashburn, S100198.

#01-15 People v. McCord, S093602.

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